

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the
2 Code of Virginia, and to amend the Code of Virginia by adding in Chapter 9.1 of Title 56
3 an article numbered 3, consisting of sections numbered 56-231.53, 56-231.54, and 56-
4 231.55, relating to utility consumer services cooperatives; self regulation.

5 **Be it enacted by the General Assembly of Virginia:**

6 **1. That §§ 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the Code of Virginia are**
7 **amended and reenacted and that the Code of Virginia is amended by adding in Chapter**
8 **9.1 of Title 56 an Article numbered 3, consisting of sections numbered 56-231.53, 56-**
9 **231.54, and 56-231.55, as follows:**

10 Article 3.

11 Self Regulation.

12 § 56-231.53. Definitions.

13 As used in this article:

14 "Board" means the board of directors of a cooperative formed under or subject to this
15 Article 1 (§ 56-231.15 et seq.) of this chapter.

16 "Cooperative" means a utility consumer services cooperative formed under or subject to
17 Article 1 (§ 56-231.15 et seq.) of this chapter or a distribution cooperative formed under the
18 former Distribution Cooperatives Act (§ 56-209 et seq.).

19 "Member" means any person that holds any class of membership in a cooperative.

20 "Referendum" means a referendum of the members in accordance with § 56-231.54.

21 "Self-regulating cooperative" means a cooperative that has elected self-regulation in
22 accordance with this article.

1 "Self-regulation" means regulation by the board of a cooperative that has complied with
2 the provisions of this article, rather than by the Commission, with respect to rates, service and
3 other matters described in this article.

4 § 56-231.54. Self-regulation.

5 A. After July 1, 2001, within forty-five days of the adoption by the board of a cooperative
6 of a resolution recommending self-regulation, or within forty-five days of the submission to the
7 cooperative of a petition recommending self-regulation and signed by one percent or more of
8 the members, the cooperative shall publish notice of a referendum for self regulation. The
9 notice of referendum will pose the following question: "Shall the members of [name of
10 cooperative], through the board, regulate the rates and services of the cooperative as set out
11 in Va. Code §§ 56-231.53 - 56-231.55, and terminate the regulation of such rates and services
12 by the State Corporation Commission of Virginia?"

13 B. The notice will set forth the time and place of an annual or special meeting, in
14 accordance with Article 1 (§ 56-231.15 et seq.) of this chapter and the bylaws of the
15 cooperative, at which the referendum will be held. Notwithstanding any contrary provision in
16 the charter or bylaws of the cooperative, the board may elect to accept mailed ballots on the
17 referendum, and in such case, a mailed ballot will be included with the notice.

18 C. If two-thirds of the votes cast on a referendum are affirmative, then the referendum
19 shall pass.

20 D. Within thirty days of the passage of a referendum for self-regulation, the cooperative
21 shall certify to the commission, the adoption of self-regulation by the cooperative.

22 E. Notwithstanding any other provision of law or regulation, upon certification of self-
23 regulation, a cooperative shall not be subject to the provisions of §§ 56-6, 56-36 or 56-40,
24 Chapter 3 (§ 56-55 et seq.) of this title, Chapter 4 (§ 56-76 et seq.) of this title, §§ 56-231.34,
25 56-232, 56-233.1, 56-234, 56-234.2 through 56-234.5, 56-235, 56-235.1 through 56-235.4, 56-
26 236 through 56-240, 56-242 through 56-245, 56-246 through 56-249, 56-249.2 through 56-
27 249.7, and 56-265.

1 F. Notwithstanding §§ 56-90, 56-231.33, 56-578, 56-580, 56-581 or any other provision
2 of law, the Commission shall not regulate the rates or service of a self-regulating cooperative;
3 provided that each self-regulating cooperative shall remain subject to the provisions of § 56-
4 582. Self-regulating cooperatives shall provide default service to their members in accordance
5 with the provisions of § 56-585.

6 G. Notwithstanding § 56-231.33 or any other provision of law, the Commission shall not
7 regulate or approve under Chapter 3 (§ 56-55 et seq.) of this title any security or loan of a self-
8 regulating cooperative, and the absence of such regulation or approval shall not render any
9 rate covenant unreasonable or unjust under § 56-231.33.

10 H. Notwithstanding self-regulation, § 56-231.34:1 and § 56-231.34:2 shall apply to a
11 self-regulating cooperative. For the purposes of applying § 56-231.34:1 and § 56-231.34:2 to a
12 self-regulating cooperative, "regulated utility services" shall mean utility services that were
13 subject to regulation as to rates or service by the Commission, as of January 1, 2001.

14 I. Notwithstanding anything in this article, a self-regulating cooperative shall continue to
15 be a public service corporation with the rights and duties assigned to public service
16 corporations in §§ 56-2, 56-18, 56-19, 56-41.1, 56-43, 56-46.1, 56-46.2, and 56-49, Chapter 5
17 (§ 56-88 et seq.) of this title, § 56-236.2, § 56-249.1, Chapter 10.1 (§ 56-265.1 et seq.) and
18 Chapter 10.3 (§ 56-265.14 et seq.) of this title, §§ 56-576, 56-577, 56-578, 56-581 through 56-
19 585, 56-587, 56-588, 56-590, and 56-592.

20 § 56-231.55. Resumption of Commission regulation.

21 A. A cooperative that has elected self-regulation shall publish notice of a referendum for
22 resumption of Commission regulation within forty-five days after the adoption by the board of a
23 cooperative of a resolution recommending resumption of such regulation, or after the
24 submission to the cooperative of a petition recommending resumption of such regulation and
25 signed by one percent or more of the members. The notice of referendum will pose the
26 following question: "Shall the State Corporation Commission regulate the rates and services of

1 [name of cooperative] and terminate the regulation of such rates and services by the members
2 of the cooperative acting through the board?"

3 B. The notice will set forth the time and place of an annual or special meeting, in
4 accordance with Article 1 (§ 56-231.15 et seq.) of this chapter and the bylaws of the
5 cooperative, at which the referendum will be held. Notwithstanding any contrary provision in
6 the charter or bylaws of the cooperative, the board may elect to accept mailed ballots on the
7 referendum, and in such case, a mailed ballot will be included with the notice.

8 C. If two-thirds of the votes cast on a referendum are affirmative, then the referendum
9 shall pass.

10 D. Within thirty days of the passage of a referendum for resumption of Commission
11 regulation, the cooperative shall certify to the commission the resumption of Commission
12 regulation.

13 E. Within sixty days of certification of the resumption of Commission regulation, a
14 cooperative will file temporary rates, and a rate application, along with such supporting exhibits
15 as shall be necessary for the Commission to resume regulation of the rates and services of the
16 cooperative.

17 § 56-256. Powers of corporations generally; rights, powers, privileges and immunities,
18 etc.

19 Every corporation organized for the purpose of: (1) constructing, maintaining, and
20 operating an electric railway, or works, (2) supplying and distributing electricity for light, heat,
21 or power, (3) producing, distributing, and selling steam, heat, or power, or compressed air, (4)
22 producing, distributing and selling gas made of coal or other materials, (5) furnishing and
23 distributing a water supply to any city or town, or (6) piping cold air outside of its plant, or (7)
24 constructing and maintaining any public viaduct, bridge or conduit, shall, in addition to the
25 powers conferred upon corporations generally, have all the rights, powers, privileges, and
26 immunities, and be subject to all the rules, regulations, restrictions, pains, and penalties
27 prescribed by §§ 56-458, 56-459 to 56-462, 56-466, 56-467 and 56-484, which sections shall

1 apply to, and as far as practicable, operate upon the corporations mentioned in this section,
2 unless otherwise provided. Notwithstanding the definition of “public utility” contained in § 56-
3 232, any utility consumer services cooperative that has elected self-regulation in accordance
4 with Article 3 (§ 56-231.53 et seq.) of Chapter 9.1 of this title shall have all the rights, powers,
5 privileges, and immunities, and be subject to all the rules, regulations, restrictions, pains, and
6 penalties prescribed by §§ 56-458, 56-459 through 56-462, 56-466, 56-467 and 56-484.

7 § 56-578. Nondiscriminatory access to transmission and distribution system.

8 A. All distributors shall have the obligation to connect any retail customer, including
9 those using distributed generation, located within its service territory to those facilities of the
10 distributor that are used for delivery of retail electric energy, subject to Commission rules and
11 regulations and approved tariff provisions relating to connection of service.

12 B. Except as otherwise provided in this chapter, every distributor shall provide
13 distribution service within its service territory on a basis which is just, reasonable, and not
14 unduly discriminatory to suppliers of electric energy, including distributed generation, as the
15 Commission may determine. The distribution services provided to each supplier of electric
16 energy shall be comparable in quality to those provided by the distribution utility to itself or to
17 any affiliate. The Commission shall establish rates, terms and conditions for distribution service
18 under Chapter 10 (§ 56-232 et seq.) of this title except for distribution services provided by a
19 utility consumer services cooperative that has elected self-regulation in accordance with Article
20 3 (§ 56-231.53 et seq.) of Chapter 9.1 of this title.

21 C. The Commission shall establish interconnection standards to ensure transmission
22 and distribution safety and reliability, which standards shall not be inconsistent with nationally
23 recognized standards acceptable to the Commission. In adopting standards pursuant to this
24 subsection, the Commission shall seek to prevent barriers to new technology and shall not
25 make compliance unduly burdensome and expensive. The Commission shall determine
26 questions about the ability of specific equipment to meet interconnection standards.

1 D. The Commission shall consider developing expedited permitting processes for small
2 generation facilities of fifty megawatts or less. The Commission shall also consider developing
3 a standardized permitting process and interconnection arrangements for those power systems
4 less than 500 kilowatts which have demonstrated approval from a nationally recognized testing
5 laboratory acceptable to the Commission.

6 E. Upon the separation and deregulation of the generation function and services of
7 incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric
8 transmission function and services, to the extent not preempted by federal law. Nothing in this
9 section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with
10 respect to the construction of electric transmission facilities.

11 F. If the Commission determines that increases in the capacity of the transmission
12 systems in the Commonwealth, or modifications in how such systems are planned, operated,
13 maintained, used, financed or priced, will promote the efficient development of competition in
14 the sale of electric energy, the Commission may, to the extent not preempted by federal law,
15 require one or more persons having any ownership or control of, or responsibility to operate, all
16 or part of such transmission systems to:

- 17 1. Expand the capacity of transmission systems;
- 18 2. File applications and tariffs with the Federal Energy Regulatory Commission (FERC)
19 which (i) make transmission systems capacity available to retail sellers or buyers of electric
20 energy under terms and conditions described by the Commission and (ii) require owners of
21 generation capacity located in the Commonwealth to bear an appropriate share of the cost of
22 transmission facilities, to the extent such cost is attributable to such generation capacity;
- 23 3. Enter into a contract with, or provide information to, a regional transmission entity; or
- 24 4. Take such other actions as the Commission determines to be necessary to carry out
25 the purposes of this chapter.

26 G. If the Commission determines, after notice and opportunity for hearing, that a person
27 has or will have, as a result of such person's control of electric generating capacity or energy

1 within a transmission constrained area, market power over the sale of electric generating
2 capacity or energy to retail customers located within the Commonwealth, the Commission
3 may, to the extent not preempted by federal law and to the extent that the Commission
4 determines market power is not adequately mitigated by rules and practices of the applicable
5 regional transmission entity having responsibility for management and control of transmission
6 assets within the Commonwealth, adjust such person's rates for such electric generating
7 capacity or energy, only within such transmission-constrained area and only to the extent
8 necessary to protect retail customers from such market power. Such rates shall remain
9 regulated until the Commission, after notice and opportunity for hearing, determines that the
10 market power has been mitigated.

11 § 56-580. Transmission and distribution of electric energy.

12 A. The Commission shall continue to regulate pursuant to this title the distribution of
13 retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited
14 by federal law, the transmission of electric energy in the Commonwealth.

15 B. The Commission shall continue to regulate, to the extent not prohibited by federal
16 law, the reliability, quality and maintenance by transmitters and distributors of their
17 transmission and retail distribution systems.

18 C. The Commission shall develop codes of conduct governing the conduct of incumbent
19 electric utilities and affiliates thereof when any such affiliates provide, or control any entity that
20 provides, generation, distribution, transmission or any services made competitive pursuant to §
21 56-581.1, to the extent necessary to prevent impairment of competition.

22 D. The Commission may permit the construction and operation of electrical generating
23 facilities upon a finding that such generating facility and associated facilities including
24 transmission lines and equipment (i) will have no material adverse effect upon reliability of
25 electric service provided by any regulated public utility and (ii) are not otherwise contrary to the
26 public interest. In review of its petition for a certificate to construct and operate a generating
27 facility described in this subsection, the Commission shall give consideration to the effect of

1 the facility and associated facilities, including transmission lines and equipment, on the
2 environment and establish such conditions as may be desirable or necessary to minimize
3 adverse environmental impact as provided in § 56-46.1.

4 E. Nothing in this section shall impair the distribution service territorial rights of
5 incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution
6 services within their exclusive service territories as established by the Commission. Nothing in
7 this chapter shall impair the Commission's existing authority over the provision of electric
8 distribution services to retail customers in the Commonwealth including, but not limited to, the
9 authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.
10 Such authority shall not extend to distribution services provided by a utility consumer services
11 cooperative that has elected self-regulation in accordance with Article 3 (§ 56-231.53 et seq.)
12 of Chapter 9.1 of this title.

13 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility
14 owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter
15 apply to any such electric utility unless (i) that municipality elects to have this chapter apply to
16 that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric
17 energy to any retail customer outside the geographic area that was served by such
18 municipality as of July 1, 1999.

19 § 56-581. Regulation of rates subject to Commission's jurisdiction.

20 A. Subject to the provisions of § 56-582, the Commission shall regulate the rates for the
21 transmission of electric energy, to the extent not prohibited by federal law, and for the
22 distribution of electric energy, subject to the provisions of Article 3 (§ 56-231.53 et seq.) of
23 Chapter 9.1 of this title, to such retail customers on an unbundled basis, but, subject to the
24 provisions of this chapter after the date of customer choice, the Commission no longer shall
25 regulate rates and services for the generation component of retail electric energy sold to retail
26 customers.

1 B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power
2 supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a
3 consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale
4 supplier, nor must any adjustment be made to such cooperative's rates as a consequence
5 thereof.

6 C. Except for the provision of default services under § 56-585 or emergency services in
7 § 56-586, nothing in this chapter shall authorize the Commission to regulate the rates or
8 charges for electric service to the Commonwealth and its municipalities.

9 § 56-582. Rate caps.

10 A. The Commission shall establish capped rates, effective January 1, 2001, and
11 expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

12 1. Capped rates shall be established for customers purchasing bundled electric
13 transmission, distribution and generation services from an incumbent electric utility.

14 2. Capped rates for electric generation services, only, shall also be established for the
15 purpose of effecting customer choice for those retail customers authorized under this chapter
16 to purchase generation services from a supplier other than the incumbent utility during this
17 period.

18 3. The capped rates established under this section shall be the rates in effect for each
19 incumbent utility as of the effective date of this chapter, or rates subsequently placed into
20 effect pursuant to a rate application filed by an incumbent electric utility with the Commission
21 prior to January 1, 2001, and subsequently approved by the Commission, and made by an
22 incumbent electric utility that is not currently bound by a rate case settlement adopted by the
23 Commission that extends in its application beyond January 1, 2002. If such rate application is
24 filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be
25 interim in nature and subject to refund until such time as the Commission has completed its
26 investigation of such application. Any amount of the rates found excessive by the Commission
27 shall be subject to refund with interest, as may be ordered by the Commission. The

1 Commission shall act upon such applications prior to commencement of the period of transition
2 to customer choice. Such rate application and the Commission's approval shall give due
3 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be
4 effective for a period of time ending as late as July 1, 2007. The capped rates established
5 under this section, which include rates, tariffs, electric service contracts, and rate programs
6 (including experimental rates, regardless of whether they otherwise would expire), shall be
7 such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that
8 experimental rates and rate programs may be closed to new customers upon application to the
9 Commission.

10 B. The Commission may adjust such capped rates in connection with the following: (i)
11 utilities' recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the
12 Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility
13 beyond its control, (iv) with respect to cooperatives that were not members of a power supply
14 cooperative on January 1, 1999, and as long as they do not become members, their cost of
15 purchased wholesale power and discounts from capped rates to match the cost of providing
16 distribution services, and (v) with respect to cooperatives that were members of a power
17 supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale
18 power cost adjustment clauses of their tariffs pursuant to § 56-226. Notwithstanding the
19 provisions of § 56-249.6, the Commission may authorize tariffs that include incentives
20 designed to encourage an incumbent electric utility to reduce its fuel costs by permitting
21 retention of a portion of cost savings resulting from fuel cost reductions or by other methods
22 determined by the Commission to be fair and reasonable to the utility and its customers.

23 C. A utility may petition the Commission to terminate the capped rates to all customers
24 any time after January 1, 2004, and such capped rates may be terminated upon the
25 Commission finding of an effectively competitive market for generation services within the
26 service territory of that utility. If the capped rates are continued after January 1, 2004, an
27 incumbent electric utility which is not, as of the effective date of this chapter, bound by a rate

1 case settlement adopted by the Commission that extends in its application beyond January 1,
2 2002, may petition the Commission for approval of a one-time change in the nongeneration
3 components of such rates. If the capped rates are continued after January 1, 2004, a self-
4 regulating cooperative, as defined in § 56-231.53, may adopt a one-time change in the
5 nongeneration components of such rates.

6 D. Until the expiration or termination of capped rates as provided in this section, the
7 incumbent electric utility, consistent with the functional separation plan implemented under §
8 56-590, shall make electric service available at capped rates established under this section to
9 any customer in the incumbent electric utility's service territory, including any customer that,
10 until the expiration or termination of capped rates, requests such service after a period of
11 utilizing service from another supplier.

12 E. During the period when capped rates are in effect for an incumbent electric utility,
13 such utility may file with the Commission a plan describing the method used by such utility to
14 assure full funding of its nuclear decommissioning obligation and specifying the amount of the
15 revenues collected under either the capped rates, as provided in this section, or the wires
16 charges, as provided in § 56-583, that are dedicated to funding such nuclear decommissioning
17 obligation under the plan. The Commission shall approve the plan upon a finding that the plan
18 is not contrary to the public interest.

19 § 56-585. Default service.

20 A. The Commission shall, after notice and opportunity for hearing, (i) determine the
21 components of default service and (ii) establish one or more programs making such services
22 available to retail customers requiring them commencing with the date of customer choice for
23 all retail customers established pursuant to § 56-577. For purposes of this chapter, "default
24 service" means service made available under this section to retail customers who (i) do not
25 affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or
26 (iii) have contracted with an alternative supplier who fails to perform.

1 B. The Commission shall designate the providers of default service. In doing so, the
2 Commission:

3 1. Shall take into account the characteristics and qualifications of prospective providers,
4 including cost, experience, safety, reliability, corporate structure, access to electric energy
5 resources necessary to serve customers requiring such services, and other factors deemed
6 necessary to protect the public interest;

7 2. May, upon a finding that the public interest will be served, designate one or more
8 willing providers to provide one or more components of such services, in one or more regions
9 of the Commonwealth, to one or more classes of customers; and

10 3. In the absence of a finding under subdivision 2, may require an incumbent electric
11 utility or distribution utility to provide one or more components of such services, or to form an
12 affiliate to do so, in one or more regions of the Commonwealth, at rates which are fairly
13 compensatory to the utility and which reflect any cost of energy prudently procured, including
14 energy procured from the competitive market; however, the Commission may not require an
15 incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services
16 outside the territory in which such utility provides service.

17 C. The Commission shall, after notice and opportunity for hearing, determine the rates,
18 terms and conditions for such services consistent with the provisions of subdivision B 3 and
19 Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers
20 and customers as it finds necessary to promote the reliable and economic provision of such
21 services and to prevent the inefficient use of such services. The Commission may use any rate
22 method that promotes the public interest and may establish different rates, terms and
23 conditions for different classes of customers.

24 D. On or before July 1, 2004, and annually thereafter, the Commission shall determine,
25 after notice and opportunity for hearing, whether there is a sufficient degree of competition
26 such that the elimination of default service for particular customers, particular classes of
27 customers or particular geographic areas of the Commonwealth will not be contrary to the

1 public interest. The Commission shall report its findings and recommendations concerning
2 modification or termination of default service to the General Assembly and to the Legislative
3 Transition Task Force, not later than December 1, 2004, and annually thereafter.

4 E. A distribution electric cooperative, or one or more affiliates thereof, shall have the
5 obligation and right to be the supplier of default services in its certificated service territory.
6 Such default services, for the purposes of this subsection, shall include the supply of electric
7 energy and all services made competitive pursuant to § 56-581.1. A cooperative's rates for
8 such default services shall be the capped rate for the duration of the capped rate period, and
9 shall be based upon the cooperative's prudently incurred costs, thereafter. If a distribution
10 electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier in
11 the service territory of another electric utility, then the Commission shall designate the default
12 supplier for the service territory of that distribution electric cooperative, or any affiliate thereof,
13 pursuant to subsection B.

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